

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11071 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KARSHANBHAI K.RABARI & ORS.

Versus

STATE OF GUJARAT

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Appearance:

MR GAUTAM JOSHI for Petitioners

MR TUSHAR SOMPUA for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/97

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties. The petitioners, in all 35 in number, are working on different posts like Clerk, Typist, Telephone Operator etc. in the department of Roads & Buildings, filed this Special Civil Application and challenge has been made to the order dated 12th August, 1991, annexure 'G', and further prayed for direction to the respondents to give benefits like L.T.C., Leave encashment and other advances with effect from the day on which the petitioners became

eligible on their completion of 240 days and its payment to the petitioner accordingly with retrospective date, and to give to the petitioners immediately the benefits of Government quarters with all consequential and incidental orders in this regard. It has further been prayed that the directions may be given to the respondents to regularise the services of all the petitioners on their completion of 240 days with effect from the date of initial appointment of the petitioners with all the consequential benefits including the difference in salary, difference in encashment and other benefits which are enumerated in terms of the circular dated 17th October, 1988 and 30th October, 1991.

2. In annexure 'A' filed to the Special Civil Application, the petitioners have given out their date of appointments in the service. From that statement it comes out that the petitioners have been appointed in between the period 1976 to 1985. Annexure 'G' dated 12th August, 1991, is a clarification to the resolution dated 17th October, 1988.

3. Annexure 'D' is a resolution of the Government under which it has been resolved to extend certain benefits to the daily wage employees. Clause (2) of the said resolution provides that as per the provisions of sec.25(B) of the Industrial Disputes Act, 1947, daily wage labourers who have put in more than five but less than ten years of service on 1-10-1988, shall be paid monthly wage arrived at by taking into consideration the fixed monthly pay payable as per the prevailing pay-scale in the concerned cadre and the dearness allowance admissible there on as per the prevailing rates, for the number of days present. Besides, 14 casual leaves including two for restricted holidays, leave of Sundays and leave on the days of National Festivals shall be admissible in a year with pay and the benefits of Medical facilities and deduction for General Provident Fund shall also be admissible as per the rules.

4. Clause (3) provides that the skilled daily wage labourers who have put in more than ten years of service on 1-10-88 shall be considered permanent and such permanent labourers shall be placed in the running scale of the prevailing pay-scale of the concerned cadre and accordingly, pay, dearness allowances, house rent allowance, local compensatory allowances shall be paid to him. It is further decided to give such persons the benefits of superannuation, pension, gratuity, General Provident Fund etc. as per the prevailing rules. Further, 14 Casual leaves including two for restricted

holidays, 30 earned leaves, 20 half pay leaves shall be admissible to them over and above the weekly leave of Sundays and the leave on the days of National Festivals. The age-limit for superannuation of the permanent labourers shall be 60 years. The period of permanent service shall be treated as qualifying service. It has further been decided that as per the provision of sec. 25(B) of the Industrial Disputes Act, the skilled labourers who have completed 15 years of service on 1-10-88, shall be given one increment and who have completed 20 and more than 25 years of service likewise shall be given two and three increments in the prevailing pay-scale of the concerned cadre respectively and their pay shall be accordingly fixed on 1-10-88.

5. Reference may have to the another resolution of the Government dated 1-5-91. As new policy pertaining to service and wages for daily wagers has been formulated vide resolution dated 17th October, 1988, the consequent administrative work of the daily wagers like their leaves, pay-scale, to release increments, account of GPF/GPF pass book, service record and maintenance of service book etc. has been increased. No additional staff for this purpose is sanctioned, and as such, to carry out all these works and to implement the resolution dated 17th October, 1988, it has been decided to assign these works to daily wagers. It has been decided under this resolution that those S.S.C. passed daily wagers who have completed 07 years of service as per section 25(B) of the Act, 1947, be assigned the administrative work of clerks (Gr.III) and therefore, further instructed to give salary in the pay-scale of 950-1500 from the date of assignment of this work.

6. Then comes the next resolution dated 30th October, 1991. Certain problems were raised in giving effect to the resolution dated 1st May, 1991, and as such, to clarify the position this resolution has been passed. It has been resolved out therein that all S.S.C. passed daily wagers completing seven years of service as on 1-5-1991 be given the pay at Rs.950/- in the pay-scale of 950-1500 from the said date. It has further been provided that all S.S.C passed daily wagers getting pay of Rs.950/- in the pay-scale of 950-1500 will be entitled after completing ten years of service to get all the facilities as of permanent daily wagers as per the Government resolution dated 17th October, 1988. Certain other conditions have also been laid down.

7. The petitioners are appointed as daily wagers, and as the daily wagers have no right whatsoever, but

still taking into consideration the fact that they are working for years together, certain benefits have been extended to them. However, the petitioners cannot be at par with the permanent employee in the regular establishment. They have been taken to be in work-charged establishment, and as such, they are not entitled to all those benefits which are being given to the employees who are in permanent establishment. The petitioners were taken as purely temporary employees on daily wages and they have been given the work on the day on which the work was available. As Government has conferred certain benefits to this class of persons on the recommendations of the Committee, and it has been done under the resolution dated 17th October, 1988. The petitioners have not been appointed by regular selection. Whatever benefits which have been given to the class of persons to which the petitioners belong under the resolutions, they are getting it, but the demand of the petitioners for L.T.C., Leave encashment, advances etc. is wholly unjustified. The resolution dated 12th August, 1991, has been issued to clarify the position that those class of persons are only entitled to the benefits as has been conferred under the resolution dated 17th October, 1988. That resolution nowhere provides for giving these benefits to those class of persons. The benefits which are to be given to them are specifically provided, but having the apprehension that in some circles these persons may not be taken to be permanent for all the purposes, this clarification has been issued under the resolution dated 12th August, 1991. It has been clarified that the daily wagers are entitled to get only limited facilities as referred in the resolution dated 17th October, 1988, and to avoid any confusion or any doubt, it has been clarified that they shall not be entitled for L.T.C., Leave encashment, advances, Government houses etc..

8. In the case of State of Himachal Pradesh vs. Suresh Kumar Verma, reported in JT 1996 (2) SC 455, the Apex Court held that the State is bound to follow the rules of recruitment to various services under the State or to a class of posts under the State, and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. It has further been held that the appointment on daily wage basis is not an appointment to a post according to the Rules. It is not the case of the petitioners that there are no rules for making the recruitment to the post. Even if it is a case where there are no recruitment rules, then the recruitment to the post can only be made, may be on work-charged establishment, in accordance with

the Articles 14 and 16 of the Constitution by giving opportunity to all the eligible persons in the public employment. The appointment on daily wages cannot be conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. The Apex court has further given out that even for Class IV employees recruitment according to rules is a precondition. The Apex Court further observed that only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. It is exactly the case here. The daily wage skilled labourers are being appointed for transitory work of urgent nature in a project, but as different projects come from time to time they are continued for years together. For their rehabilitation and to give them some more benefits, the resolution dated 17th October, 1988 has been passed, but as observed by the Hon'ble Supreme Court, in the case of State of Himachal Pradesh vs. Suresh Kumar Verma (supra) the appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry. So a clear distinction has been drawn by the Apex Court in the case of appointment made in accordance with the Rules and in confirmation of Articles 14 and 16 of the Constitution on permanent basis or may be temporary and appointment given on daily wages in connection with the work of temporary nature or transitory nature.

9. The employees who have been appointed on work-charged establishment on daily wages are not entitled for the parity with the employees in regular establishment who have been appointed in accordance with the recruitment rules in all respect. The resolution dated 17th October, 1988, does not confer any such benefit, and as such, the petitioners cannot claim any other benefits. The petitioners are under a misconception that as if under the resolution dated 12th August, 1991 some benefits which have been conferred to those class of persons under the earlier resolution has been taken away. As stated earlier, the resolution dated 12th August, 1991 is only a clarification and it only clarifies what the resolution dated 17th October, 1988 contemplates. It is a sort of note of caution that the daily wagers have to be given only the benefits which have been provided under the resolution dated 17th October, 1988. In fact, by filing this writ petition, the petitioners are seeking something more than what it has been provided under the resolution dated 17th October, 1988. The petitioners have not challenged that

resolution at any point of time and if they were satisfied by whatever reliefs given to the daily wagers under the said resolution, are only the reliefs for which they are entitled. In the garb of challenge to the resolution dated 12th August, 1991, no further relief can be claimed by the petitioners. The challenge to this resolution dated 12th August, 1991 suffers from delay and laches also.

10. So far as the second prayer of the petitioners to regularise the services of all the petitioners on their completion of 240 days with effect from the date of their initial appointment is concerned, it is suffice to say that this prayer also cannot be granted. The appointment of all the daily wagers as held by the Apex Court in the case of State of Himachal Pradesh vs. Suresh Kumar (supra) are back-door entries and there is no question of any regularisation. If some benefits have been extended to this class of persons by the government and that is only the thing which they can claim if they are eligible for the same in accordance with the terms and conditions as laid down under the resolution. The regularisation cannot be claimed as of right.

11. It is advantageous to make reference to two decisions of the Apex court in this respect. In the case of Hindustan Shipyard Ltd. vs. Dr. P. Sambasiva Rao etc. reported in JT 1996 (2) SC 481, the directions given by the High Court for regularisation of the respondents, Medical Officers have been set aside. The Hon'ble Supreme Court has observed that the process of regularisation involves regular appointment which can be done only in accordance with the prescribed procedure. It is not the case of the petitioners that the regular appointment on the post of Clerks or even on Class IV posts can be made without following the recruitment rules if those are provided for regularisation or if nothing has been provided then in violation of Articles 14 and 16 of the Constitution of India. One of the contentions raised in the case before the Apex Court was that no regular selection has been made after the appointment of the respondents on adhoc basis and the respondents have rightly been ordered to be in regular service with effect from 1st April, 1986. The Apex Court referred its earlier decision in the case of Dr.M.A. Haque & Ors. vs. Union of India & Ors. reported in JT 1993 (2) SC 265, wherein the Court has deprecated the practice of by-passing of the Public Service Commission which would open a back door for illegal recruitment without limit.

12. The next decision is in the case of Surinder

Singh Jamwal vs. The State of Jammu & Kashmir & Ors. reported in JT 1996 (6) SC 725. In that case, the appointment of Doctor again who has put 13 years of adhoc service and claimed for regularisation, but the Court has not allowed the regularisation and directions were issued to notify the vacancies to the Public Service Commission within the time as granted therein and the appellant therein has been given a chance to compete in the open selection.

13. In the present case, the petitioners wanted a blanket direction from this Court that all the daily wage employees who have completed 240 days should be regularised from the date of their appointment and if such a direction is given then as observed by the Hon'ble Supreme Court, it will open another mode of recruitment which may be contrary to Articles 14 and 16 of the Constitution as well as the recruitment rules.

14. In the result, this writ petition fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated. No order as to costs.

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